

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	) Fair Hearing No. S-02/09-99
	)
Appeal of	)

INTRODUCTION

The petitioner appeals a decision by the Department of Disabilities, Aging and Independent Living (DAIL) terminating his medical eligibility for "highest needs" under the Medicaid Choices for Care (CFC) program. The issue is whether the petitioner's medical condition requires ongoing nursing home level care.

DISCUSSION

The petitioner filed his appeal in this matter in February 2009. Several telephone status conferences have been held with the parties' attorneys. Following the petitioner's appeal the Department agreed to review its assessment of the petitioner's medical condition. At a final status conference held on June 12, 2009 the hearing officer determined that the essential facts were not in dispute, and that the Department should file a Motion for Summary Judgment. At that time the petitioner declined the opportunity to supplement the existing medical evidence. The

petitioner's eligibility for CFC to cover his current nursing home costs has been continued pending resolution of this Fair Hearing.

The essential facts in the case are set forth in the following affidavit, dated June 29, 2009, that accompanied the Department's Motion for Summary Judgment:

1. I am a Long Term Care Clinical Coordinator for the Department of Disabilities, Aging and Independent Living. My job duties include assessing clinical eligibility for applicants to CFC and to assess continuing eligibility for CFC.
2. I am the registered nurse who conducted the initial assessment and recent assessment of [petitioner] pursuant to his participation in the Choices for Care ("CFC") program.
3. I arranged for and conducted both of these assessments at Springfield Health and Rehabilitation Center where [petitioner] has been residing since November 2008.
4. I determined in November 2008 that [petitioner] was eligible for Choices for Care for a short term rehabilitation stay following a hospitalization. I approved the short term stay so that he could receive physical and occupational therapy.
5. At the time of my initial assessment, [petitioner] did not need skilled nursing care on a daily basis, did not have an unstable health condition, and did not require extensive assistance with any of his activities of daily living, all as defined in the CFC regulations.
6. When his program of OT and PT ended, I sent a termination of benefits notice and he (or his family) appealed. He has continued to reside at the Nursing Home pursuant to his request for continuing benefits.

7. During his time in residence at Springfield Health and Rehab, I have reviewed several "Multiple Data Sets" created by nurses on staff at Springfield Health and Rehab.
8. I additionally personally reassessed [petitioner] in May 2009.
9. All the information that I have reviewed regarding his condition and my own assessments of him demonstrate to me that he does not meet nursing home level of care, as defined by the CFC regulations.
10. I have considered whether [petitioner] should be allowed to continue to stay on CFC and reside in the nursing home because of special circumstances as set forth in the regulations.
11. I understand that the apartment [petitioner] had before he went into the nursing home is no longer available to him, and that he has a history of self-neglect that strongly suggests he needs some supervision to maintain his health. I do not believe, however, that "special circumstances" apply in his case.
12. In order for him to have an appropriate setting, discharge planning should have been actively pursued from the time of his initial admission, since he was there only for short term rehab. In my discussions with the discharge planner at Springfield Health and Rehab, this does not appear to have happened to date. I was told his name had gone on the waiting list at one residential care home. There have been multiple openings at residential care homes around the state during the time he has been living in the nursing home.
13. When I reassessed [petitioner] in May of this year, he expressed a desire to leave the nursing home and agreed that he did not belong there.

14. He told me he would be willing to go to a supervised living environment such as a residential care home (under ACCS; he already has community Medicaid); and he also mentioned he would go to a senior housing environment and reside in his own apt. with services such as those available through the Moderate Needs program of CFC. [Petitioner] could also get case management services through the Older Americans Act by Council on Aging.

As noted above, the petitioner does not specifically dispute any of the facts alleged in the above Affidavit regarding his medical condition. In his reply, the petitioner points instead to concerns raised by his doctors and family members that he cannot live alone without some degree of supervision, a point the Department concedes. Unfortunately, the petitioner's concerns in this regard, however valid, miss the issue as to the criteria governing his eligibility for Choices for Care.

There exist under Vermont law several types or "levels" of community care facilities and institutions. See 33 V.S.A. § 7102. Nursing homes, like the one in which the petitioner currently resides, are considered "skilled nursing facilities", which provide the highest, and most restrictive, level of individual care, services and supervision. There is no dispute in this matter that the Department has reasonably and lawfully determined, as a matter of practice and policy,

that only those with medical conditions necessitating skilled nursing home care should be placed in such facilities.

Eligibility for CFC is determined solely on the basis of an individual's medical needs and condition. See Choices for Care, 1115 Long-term Care Medicaid Waiver Regulations (CFC Regs.) §§ IV(B)&(C). CFC covers nursing home care only for those individuals determined to be in the "highest needs group". Id. § IV(B)(1). The uncontroverted medical evidence in this case clearly supports the Department's clinical assessment that the petitioner does not meet the criteria under "highest needs".

The above notwithstanding, the Department is clearly not suggesting that the petitioner in this case be immediately discharged from the nursing home into an unsupervised setting. It is simply alleging that the petitioner's medical needs can be met, at least hypothetically, in a setting other than a nursing home, and that the petitioner's (and his doctors' and family's) concerns about "living alone without supervision" are most likely unfounded, and at best premature.

The Board has held that one cannot be deemed medically eligible for nursing home care as a matter of "default" based solely on an *alleged* lack of suitable alternatives. Fair

Hearing No. 13,475. In this case, the parties disagree strongly as to the efforts that have been made by the petitioner's family, advocates, and care providers to locate a suitable alternative residential placement for the petitioner. Certainly, if it turns out that there indeed is no suitable alternative care or residence available to the petitioner, the petitioner can raise this concern with DAIL (including the right to request a Fair Hearing) if and when the nursing home where he currently resides moves to discharge him. See 33 V.S.A. § 7301. There is no indication, however, that he is facing such an imminent discharge.<sup>1</sup>

The issue at this time concerns only the petitioner's clinical eligibility under the CFC regulations for the "highest needs group". As noted above, there is no question that Department's decision is fully supported by the pertinent medical evidence and the criteria set out in the regulations. Therefore, summary judgment in favor of the

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<sup>1</sup> In at least one other case that has come before this hearing officer (which was settled before a decision was rendered), DAIL agreed that a nursing home resident should not be discharged (and CFC payments to the nursing home continued) *until* a suitable alternative placement could be found.

Department is appropriate. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

RECOMMENDATION

The Department's decision is affirmed.

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